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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Andrew Butterworth

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EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

04/29/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/507,931	Applicant(s) BUTTERWORTH, ANDREW	
	Examiner JEFFREY G. HOEKSTRA	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-53 is/are pending in the application.
- 4a) Of the above claim(s) 32-35, 43, 44, 52 and 53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-31, 36-42 and 45-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice of Amendment

1. In response to the amendment(s) filed on 02/26/2010, amended claim(s) 23, 31, 36, and 45 is/are acknowledged. The current rejections of the claim(s) 23-31, 36-41, and 44-50 is/are *withdrawn*. The following new and/or reiterated grounds of rejection are set forth:

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 23-31, 36-42, and 45-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. The scope of the claims positively recites "a data lead port". Applicant cites page 7 lines 1-4 in the Specification for support of the limitation and refers to the newly submitted specification of the "Tinytalk II" filed 02/26/2010. Neither the disclosure nor the submission positively recite and/or refer to "a data lead port".

5. Conversely the instant disclosure and especially with respect to the elected embodiment provides for a thermometer having a signal means comprising an LED

indicator, an optical signal, an audible signal (see page 7 lines 5-30), or a radio transmitter for remote telemetry. Moreover, the detailed description of Figure 2 (see page 10) explicitly discloses the use of visual inspection of the illumination of the indicator. The written description of the thermometer does not appear to be enabled for a “wired connection”.

6. Although the specification of the “Tinytalk II” mentions a wired connection having a connector, this is preferably in the form of a serial or USB connection cable, and there is not mention of a generic connection comprising “a data lead port” as claimed.

7. The claimed subject matter is new matter and was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 23-31, 36-42, and 45-51 are rejected under 35 U.S.C. 102(b) as being anticipated by Guice et al. (US 2002/0010390 A1, hereinafter Guice).

10. For independent claim 23, Guice discloses and shows a vaginal indwelling thermometer for use in the vagina of a subject mammal (paragraphs 121-137, 154-156,

160-163, and 178-179) (as best seen in Figures 12, 13, and 17-22), the thermometer comprising *inter alia*:

- a housing (293) (as best seen in Figure 19) (paragraphs 121-137, 154-156, 160-163, and 178-179) comprising *inter alia*:
 - a temperature sensing means (the temperature sensing thermistor in paragraphs 135-137 and 179) (as best seen in Figure 19) which generates data indicative of the *per vaginam* temperature of the subject mammal (paragraphs 121-137, 154-156, 160-163, and 178-179);
 - a temperature recording means (memory storage chip 286) (as best seen in Figure 19) (paragraphs 135-137) integral with the temperature sensing means (as best seen in Figure 19) (paragraphs 121-137, 154-156, 160-163, and 178-179), wherein the temperature recording means records temperature data generated by the temperature sensing means (paragraphs 135-137); and
 - a data lead port (antenna 292) (as best seen in Figure 19) (paragraphs 122-123, 136-137, 156, and 179, especially paragraph 153);
- wherein the vaginal indwelling thermometer is configured to be left in said vagina of said subject mammal continuously for at least one week without causing discomfort to said subject (paragraphs 155, 160-163, and 178-179).

11. For independent claim 36, Guice discloses and shows a device for the prediction of ovulation in a subject mammal (paragraphs 121-137, 154-156, 160-163, and 178-179) (as best seen in Figures 12, 13, and 17-22), the device comprising *inter alia*:

- a housing (293) (as best seen in Figure 19) (paragraphs 121-137, 154-156, 160-163, and 178-179) configured to be left in a vagina of said subject mammal for at least one week without causing discomfort to said subject (paragraphs 155, 160-163, and 178-179);
- a temperature sensing means (the temperature sensing thermistor in paragraphs 135-137 and 179) (as best seen in Figure 19) located within said housing (as best seen in Figure 19) for generating data indicative of the *per vaginam* temperature of the subject mammal (paragraphs 121-137, 154-156, 160-163, and 178-179);
- a temperature recording means (memory storage chip 286) (as best seen in Figure 19) (paragraphs 135-137) located within the housing (as best seen in Figure 19) which records the temperature data generated by the temperature sensing means (paragraphs 135-137); and
- a data lead port (antenna 292) (as best seen in Figure 19) (paragraphs 122-123, 136-137, 156, and 179, especially paragraph 153).

12. For independent claim 45, Guice discloses and shows a device for the detection of infection in a subject mammal (paragraphs 121-137, 154-156, 160-163, and 178-179) (as best seen in Figures 12, 13, and 17-22), the device comprising *inter alia*:

- a housing (293) (as best seen in Figure 19) (paragraphs 121-137, 154-156, 160-163, and 178-179) configured to be left in an ear or a vagina of said subject mammal without causing discomfort to said subject (paragraphs 155, 160-163, and 178-179);
- a temperature sensing means (the temperature sensing thermistor in paragraphs 135-137 and 179) (as best seen in Figure 19) located within said housing (as best

seen in Figure 19) for generating data indicative of the core body temperature of the subject mammal (paragraphs 121-137, 154-156, 160-163, and 178-179);

- a temperature recording means (memory storage chip 286) (as best seen in Figure 19) (paragraphs 135-137) located within the housing (as best seen in Figure 19) which record the temperature data generated by the temperature sensing means (paragraphs 135-137); and
- a data lead port (antenna 292) (as best seen in Figure 19) (paragraphs 122-123, 136-137, 156, and 179, especially paragraph 153).

13. For identical claims 24, 37, and 46, Guice discloses and shows the vaginal thermometer, wherein the temperature sensing means is an electronic temperature sensing means (paragraph 179).

14. For identical claims 25, 38, and 47, Guice discloses and shows the vaginal thermometer, wherein the temperature sensing means comprises a thermistor (paragraph 179).

15. For identical claims 26, 40, and 49, Guice discloses and shows the vaginal thermometer, the housing comprises a biocompatible material (paragraphs 155-163).

16. For identical claims 27, 41, and 50, Guice discloses and shows the vaginal thermometer, wherein the housing is formed from a material comprising thermoplastic urethane (paragraph 163).

17. For identical claims 28, 42, and 51, Guice discloses and shows the vaginal thermometer, the temperature sensing means is configured and programmed to record

data at pre determined time intervals (paragraphs 100-104 and 106) based on breed and inherently comprising every 20 minutes.

18. For identical claims 29, 39, and 48, Guice discloses and shows the vaginal thermometer, wherein said subject mammal is capable of being human (as best seen in Figures 12, 13, and 17-22). The Examiner notes the subject mammal being human does not appear to further structurally define the thermometer. Moreover, Guice expressly discloses installing the thermometer in the vagina of an animal (paragraph 122).

19. For claim 30, Guice discloses and shows the vaginal thermometer, wherein the thermometer is configured to be worn *per vaginam* for at least one entire menstrual cycle (paragraphs 122-123, 136-137, 156, and 179).

20. For claim 31, Guice discloses and shows the vaginal thermometer, wherein the thermometer is configured to be used to determine ovulation in the subject mammal based on the time history profile of the subject mammal's core temperature (paragraphs 17, 71-72, 123, 125, and 179).

Response to Arguments

21. Applicant's arguments filed 02/26/2010 have been fully considered but they are not persuasive.

22. Applicant argues Guice does not disclose, teach, and/or fairly suggest "a data lead port" because Guice discloses an automated livestock monitoring system that is based on wireless communication protocols.

23. The Examiner disagrees, maintains the rejection as set forth and cited above and in response notes the following:

24. Although Guice discloses an automated livestock monitoring system that is based on wireless communication protocols and in particular at least a physiological parameter sensing telesensor having an antenna for transmission and reception of physiological data, it is reasonable to interpret an antenna to be a “data lead port” as broadly as claimed.

25. Absent any special definition in the instant Specification upon which Applicant does not appear to rely nor apparently can rely and consistent with the instant disclosure, a “data lead port” may be plainly defined as “a data connection for conducting or guiding factual information”. An antenna is clearly at least “a data connection for conducting or guiding factual information” and is a structural equivalent of the claim limitations.

Conclusion

26. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY G. HOEKSTRA whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey G Hoekstra/
Examiner, Art Unit 3736

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Supervisory Patent Examiner, Art Unit 3736